IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 495 OF 2004

Ramkrishna Sadashiv Jadhav, residing at Building No.14/21, Deonar Municipal Colony, Govandi, MUmbai-43. .. Petitioner

Versus

1. State of Maharashtra
   Government Pleader's Officer,
   High Court, Mumbai.

2. Secretary,
   Department of Education, Mumbai.

3. Director,
   Higher & Technical Education
   Department, Mumbai.

4. University of Bombay,
   University Road, Mumbai - 400 023.

5. Siddhartha College of Arts, Science and Commerce, D.N. Road,
   Mumbai - 400 023. .. Respondents

Mr. Milind Sathe i/b Ms. S.Y. Mohite for the petitioner.

Ms. Geeta Shastri, AGP, for respondents No.1 and 2.

Mr. B.V. Phadnis for respondent No.4.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 20TH APRIL, 2006

ORAL JUDGMENT. : [Per Anoop V. Mohta, J.]

. The petitioner was a part-time professor of Law College (respondent No.5), has invoked Article 226

of the Constitution of India and seeks to challenge the non-grant of the benefits of provident fund for the period he was working as part-time Professor with respondent No.4. He alternatively prayed for grant of benefit of pension and gratuity on the same foundation.

2. The petitioner had joined as part-time professor of Business Law on 4th July, 1983 and was continued till his retirement on 6th June, 2000. At the time of the retirement, the petitioner was drawing basic salary of Rs.5,138/- and dearness allowance of Rs.1,938/- aggregating to Rs.7,076/-. Based on an order in Writ Petition No.2588 of 1989, the petitioner therein who was working as a professor with respondent No.4-College had claimed the benefit of provident fund for the period of his working as part-time professor. By the order dated 16th January, 2002, the said case was considered favourably by this Court and the relief was granted. The petitioner, therefore, through his Advocate’s letter dated 10th October, 2003, requested the respondents to grant him provident fund, gratuity and monthly pension based on the same lines, but as there was no response, present Petition has been filed. The petitioner, therefore, prayed for the benefit of contributory provident fund for the entire period from 4th July, 1983, to 6th June, 2000, with interest. He

alternatively prayed for the gratuity and pension benefits with arrears from the date of retirement.

3. On 14th March, 2006, after hearing the parties for sometime, the matter was adjourned for the State Government to consider the cases of permanent part-time teachers by formulating a Scheme to enable them to get some pensionary benefits considering the long years of service they had put in as part-time teachers. Respondent No.1, by letter dated 17th April, 2006, expressed their inability to extend any such pension benefits to such part-time employees. Respondent No.1, therefore, resisted the said prayers of the petitioner by its Affidavit dated 29th March, 2004, on all counts.

4. The senior counsel appearing for the petitioner has relied on Government Resolution of 21st July, 1983, and Government Resolution of 7th September, 2001, issued by respondent No.1 and basically Rule/Clause 2(b) of the 21st July, 1983, Resolution, which is reproduced as under:

> "2(b) An employee means a full time Professor, Reader, Lecturer, Demonstrator, Tutor, Method Master, Registrar, Deputy Registrar, Superintendent, Head Clerk, Senior Clerk, Junior Clerk, Peon and other categories as are working in the non Government Colleges, as well as Universities

> in the pattern approved by the State Government and included in the salary payment Scheme operated through the State Government." [emphasis added]

Those Resolutions have also been relied upon in support of the contention that the word "other categories" as referred in Clause 2(b) above means and includes other part-time professors or lecturers who are working in the non Governmental Colleges. Their counsel further has relied on orders passed by this Court in various other Writ Petition, including Writ Petition No.2588/1989 (Order dated 16/1/2000), Writ Petition No.1601/2001 (Order dated 8/3/2002), Writ Petition No.149/2000 (Order dated 9/6/2003) and Writ Petition No.416/2000 (Order dated 9/6/2003).

5. He further relied on the order passed in Writ Petition No.90 of 1985 and order dated 20th July, 1988 passed in Writ Petition No. 1629 of 1980 and contended that this Court had already directed respondents to release the amount towards provident fund at the rate of 8.33 p.a. of the basic salary which contribution the College would have made and which was discontinued erroneously and illegally. The petitioner has, therefore, claimed equal benefits and reliefs as per the order passed in Writ Petition No.2588 of 1989 whereby,

the Petition was allowed and the respondents were directed to raise the grant of the amount of monthly contribution which would have been made by the respondents to the provident fund account of the petitioner for the relevant period. In the above Writ Petition, the part-time teachers were appointed in the year 1973 to 1977, much before the Government Resolution of 21st July, 1983, in question. The facts and circumstances are distinct and distinguishable. The decision, therefore, is of no help to the petitioner.

6. In the present Petition, we are convinced that as per Rule 2(b) of the G.R. dated 21st July, 1982, which is reproduced above, the said Scheme is applicable only to the full time teaching and non teaching staff who retired or retire on or after 1st October, 1982. It does not apply to part-time teachers. As per the said Resolution, the Scheme is not applicable to the part-time lecturers at all. Therefore, if the said Scheme itself is not applicable to the persons like the petitioner, the claim of retirement benefits cannot be extended. The learned counsel’s submission that the "other category" includes the part-time teachers like the petitioner is not correct. The Rule in question itself defines and refers to the words "An employee means full time lecturers, professors etc." The other

category as sought to be contended is not correct. The interpretation of the words "other category" cannot be read in isolation. A plain reading of the above clause itself demonstrates that it is applicable only to the full time lecturers or professors. Respondent No.1 has also averred the same in the Affidavit and resisted the claim. The G.R. has nowhere defines the term "employee" to mean part-time professors and it has specifically defined the term "employee" to mean only full-time professors who have been recruited on or after October, 1982.

7. In the present case, the petitioner was appointed on 4th July, 1983, as part-time lecturers. The Resolution dated 21st July, 1983, even otherwise, cannot be made applicable to the petitioner and in the result, he is not eligible for any pension-cum-gratuity scheme, as claimed. Even as per clause 2(f) of the Government Resolution dated 21st July, 1983, it was obligatory on the part of the full-time professors to surrender the accumulated amount of the contributory provident fund in order to avail pension-cum-retirement benefit. The petitioner being part-time lecturer is not eligible for contributory pension fund or pension gratuity scheme. As the petitioner does not fall within the ambit of the definition of "employee" as referred

above, the benefit as claimed, therefore, can not be granted to the petitioner in the facts and circumstances of the case itself. In the present case, there is no averment or any material to show that petitioner has contributed towards provident fund. Therefore, there is no question of paying matching contribution, as employees contribution, as done in other cited cases.

8. As per the Government Resolution of 1983, Clause 2(b), the employee - (full time professor) who was recruited on or after 11th October, 1982, are governed by the Pension Scheme. The said employees who were recruited on or after October, 1982, are not allowed to continue the Contributory Provident Fund Scheme in view of clause 2(f) of the Resolution. The petitioner, therefore, being part-time lecturer is not eligible for the contributory provident fund and/or even for the Pension-cum-Gratuity Scheme.

9. All the cases cited by the petitioner in which respective petitioners were appointed prior to 1st October, 1982, i.e. before the introduction of the Pension- cum-Grautity Fund Scheme.

10. In **Ramkrishna Purushottam Dalal Vs. The Principal, Ramnarain Ruia College & ors.**, decided on 28th October, 2002, a Division Bench of this High Court based on the Resolution of 21st July, 1983, has observed as under:

> "The relevant Government Resolution No.NGC-1283/(865)/UNI-4 is dated 21.07.1983 whereby a Pension-cum-Gratuity Scheme has been extended to teaching and non teaching staff of the non Agricultural Universities and the affiliated non Government Colleges. The pre-requisite qualification for eligibility of pension and gratuity is that the employee must be a full-time employee in the present case. Admittedly, the petitioner was not full-time employee for the period from 1.9.1969 to 31.7.1978 and, therefore, the said period could not have been treated as qualifying service."

. There was a claim on the basis of qualifying service in that case.

11. In view of above clear Scheme of the Government Resolution of 1983, and other Resolutions including of 7th September, 2001, which are of no assistance to the petitioner to interpret the provisions as prayed. We are not dealing with revised scales if any, need to be paid to the petitioner. Therefore,

also, the Government Resolution of revision of pay scale of teachers can not be utilised to grant the relief as claimed. All other cases (Writ Petition No.1601 of 2001, Writ Petition No.416 of 2000 & Writ Petition No.149 of 2000) cited are on the issues of grant of pay scale. They are totally different on facts and issues.

12. Taking all the above factors into consideration, the present Petition is dismissed with no order as to costs.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]